
EXHIBIT

"F"

CAUSE NO. DC-21-05134

RUSSELL PERRY
Plaintiff

V.

HOME DEPOT U.S.A., INC, and
PAVECON, LTD. CO
Defendants§
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§
§
§IN THE 192ND JUDICIAL

DISTRICT COURT OF

DALLAS COUNTY, TEXAS

PLAINTIFF'S MOTION TO RETAIN

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, THE PLAINTIFF, Russell Perry, and files this Verified Motion to Retain this case on the Court's docket for the following reasons.

I.

INTRODUCTION & BACKGROUND

1. On May 27, 2019, Plaintiff Russell Perry was a patron at the Home Depot located at 2700 East Whitestone Boulevard, Cedar Park, Texas 78613. As Russell Perry exited Home Depot, and traveled toward his vehicle he suddenly and unexpectedly fell violently on the unmarked, unlevel pavement in the parking lot. There was an approximately one-inch tall mound of asphalt. Russell Perry sustained damages and injuries; specifically, but not limited to, his right shoulder, and hands.
2. This case was filed April 23, 2021. *See* Exhibit A. Plaintiff filed a letter requesting citations was filed April 26, 2021. *See* Exhibit B.
3. Although neither party has been served, defense counsel for Pavecon is aware of the pending litigation and has responded to Plaintiff's Stowers Demand. *See* Exhibit C. Defense counsel is reaching out to their client to ascertain whether or not he may accept service on behalf of his client. As of May 24, 2021, this authorization has not yet been granted.

4. Plaintiff's counsel has diligently filed this case within the Statute of Limitations, and has promptly requested the court issue citations. Plaintiff is patiently awaiting the receipt of citations in order to properly serve the Defendants in this matter. Plaintiff has taken steps in the interim to attempt to effectuate service upon Defendant Pavecon, Ltd. Co.

II.
ARGUMENTS & AUTHORITIES

5. The Court should retain this case because Plaintiff has diligently prosecuted the case. A Court should not dismiss a case if the plaintiff shows that it has diligently prosecuted its suit. *Martin M. Villareal v. San Antonio Truck & Equipment*, 994 S.W. 2d 628, 630 (Tex. 1999); *Texas Mutual Insurance Company v. Maurillo Urquidi Olivas*, 323 S.W. 3d 266, 274 (Tex. App. – El Paso 2010, no pet.). Further, dismissal of this case would prejudice the Plaintiff, an individual that sustained injuries as a result of the alleged negligence of the Defendants. Therefore, the Court should retain this case because Plaintiff has diligently prosecuted this suit, dismissal would prejudice the Plaintiff, and delays have occurred that are out of Plaintiff's control.

III.
CONCLUSION

6. Plaintiff is diligently prosecuting this suit; therefore, the Court should retain this case on the docket, and allow for the parties to make a good faith effort to amicably resolve this case through discovery, depositions, mediation and set the matter for trial.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests the Court retain this suit on the docket, and any further relief Plaintiff would be so justly entitled.

Respectfully submitted,

MELLENDEZ LAW FIRM, P.L.L.C.
4100 Duval Rd., Bldg. 4, Ste. 104
Austin, Texas 78759
Ph: (512) 467-0600
Fx: (512) 467-0501



By: _____

Robert M. Melendez
State Bar No. 24025532
Robert@melendez-law.com
Morgan L. Curell
State Bar No. 24116241
Morgan@melendez-law.com

ATTORNEYS FOR PLAINTIFF

JURY

Exhibit A

CAUSE NO. DC-21-05134

RUSSELL PERRY
Plaintiff

v.

HOME DEPOT U.S.A., INC., and
PAVECON, LTD. CO.
Defendants.§
§
§
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§
§
§
§
§IN THE 192nd JUDICIAL

DISTRICT COURT OF

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION, AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Plaintiff Russell Perry to file her *Original Petition, and Request for Disclosure*. In support, Plaintiff respectfully shows this Court the following:

I. Discovery control plan.

1. The amount of Plaintiff's damages is entirely within the province of the jury; however, the Texas rules of Civil Procedure require a discovery level and damages range to be plead. For this reason, Plaintiff intends for discovery to be conducted under Level 3 and affirmatively pleads that he seeks monetary relief of over \$250,000.00 but less than \$1,000,000.00.

II. Parties.

2. Plaintiff is an individual who may be contacted by and through their attorney in charge.

3. Defendant Home Depot U.S.A., Inc. is an entity that may be served through its Registered Agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

4. Defendant Pavecon Ltd. Co. is an entity that may be served through its Registered

Agent, Pavecon Management, Inc., at 3022 Roy Orr Boulevard, Grand Prairie, Texas 75050.

III. Venue & Jurisdiction

5. The Court has personal jurisdiction over the Defendants in this case because they are business entities engaged in for profit business in Texas, and incorporated in Texas.

6. The Court has subject-matter jurisdiction over this lawsuit because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

7. Venue is proper in Dallas County, Texas, under TEXAS CIVIL PRACTICE & REMEDIES CODE § 15.002(3), because it is the county of defendant Pavecon Ltd. Co.'s principal office in this state, and this defendant is not a natural person. Under TEXAS CIVIL PRACTICE & REMEDIES CODE § 15.005, venue is proper in a suit in which the plaintiff has established proper venue against a defendant, the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

IV. Facts.

8. On May 27, 2019, Plaintiff Russell Perry was a patron at the Home Depot located at 2700 East Whitestone Boulevard, Cedar Park, Texas 78613. As Russell Perry exited Home Depot, and traveled toward his vehicle he suddenly and unexpectedly fell violently on the unmarked, unlevel pavement in the parking lot. There was an approximately one-inch tall mound of asphalt. Russell Perry sustained damages and injuries; specifically, but not limited to, his right shoulder, and hands.

V. Premises Liability

9. At the time of the incident, and injury made the basis of this lawsuit, Plaintiff was an invitee at the Home Depot U.S.A., Inc's property. The dangerous condition was in a common area under the Home Depot U.S.A., Inc's control, and Plaintiff was therefore, an invitee. *Adam*

Dante Corp. v. Sharpe, 483 S.W.2d 452, 454 (Tex. 1972).

10. The area in issue on the Home Depot U.S.A., Inc.'s premises posed an unreasonable risk of harm. Home Depot U.S.A., Inc. knew or reasonably should have known of the dangerous condition, and Home Depot U.S.A., Inc. owed Plaintiff a duty to use ordinary care to ensure that the premises did not present a danger to invitees. *Carlisle v. J. Weingarten, Inc.*, 152 S.W.2d 1073, 1074 (Tex. 1941); *Adam Dante Corp.*, 483 S.W.2d at 454-44 (Tex. 1972).

11. Home Depot U.S.A., Inc.'s duty to use ordinary care towards invitees includes the duty to inspect the premises to discover latent defects. *CMH Homes, Inc. v. Daenen*, 15 S.W.3d 97, 101 (Tex. 2000). Home Depot U.S.A., Inc. also owed Plaintiff a duty to warn of the condition of the premises or to make the condition safe. *State v. Williams*, 940 S.W.2d 583, 584 (Tex. 1996).

12. Home Depot U.S.A., Inc. breached their duties to Plaintiff by failing to exercise ordinary care to keep the premises in a reasonably safe condition by failing to inspect the premises for latent defects, and by failing to either warn Plaintiff of the condition of the premises, or make the condition safe.

13. Home Depot U.S.A., Inc.'s breach of these duties proximately caused injuries and damages to the Plaintiff.

VI. Negligence.

14. At the time of the incident, Defendants committed acts of negligence. Defendants owed a legal duty to the Plaintiff, breached that duty to the Plaintiff, and this proximately caused injuries and damages to Russell Perry.

15. Defendants' negligent conduct proximately caused Plaintiff's injuries and damages.

VII. Notice of intent to use produced documents.

16. Plaintiff gives notice under TEXAS RULE OF CIVIL PROCEDURE 193.7 of the intent

to use documents that Defendants produce in response to written discovery in any pretrial proceeding or at trial.

VIII. Request for Disclosure

17. Plaintiff hereby requests Defendants disclose the information described in Rule 194.2(a) through (1) of the Texas Rules of Civil Procedure.

IX. Request for Inspection of the Premises at 2700 East Whitestone Boulevard, Cedar Park, Texas 78613

18. Pursuant to Rule 196, Texas Rules of Civil Procedure, Plaintiff respectfully requests an inspection of the property located at 2700 East Whitestone Boulevard, Cedar Park, Texas 78613. The daytime inspection will consist of visual inspection, photography, video and measurements. No destruction will take place.

X. Damages.

19. Plaintiff Russell Perry sustained damages as a result of Defendants' negligence. His damages include:

- a. Past and future medical expenses;
- a. Past and future physical impairment;
- b. Past and future physical pain and suffering;
- c. Past and future mental anguish and torment.

Prayer.

Wherefore, premises considered, Plaintiff Russell Perry respectfully prays that the Court:

- a. Award judgment to Plaintiff against Defendants for:
 - i. Actual, general, and special damages within the jurisdictional limits of this Court;
 - ii. Prejudgment and post-judgment interest at the maximum legal rate;

- iii. Court costs; and
- iv. Reasonable and necessary attorney's fees for post-judgment work, including:
 - A. \$5,000 if a Party files a Motion for New Trial;
 - B. \$15,000 if a Party files an appeal with the Court of Appeals; and
 - C. \$25,000 if a Party files an appeal with the Supreme Court of Texas; and
- b. Give all other relief, at law or in equity, to which Plaintiff is justly entitled.

Respectfully Submitted,

MELENDEZ LAW FIRM, PLLC



Robert M. Melendez

State Bar Number: 24025532

melendez.attorney@gmail.com

Morgan L. Curell

State Bar No. 24116241

Morgan@Melendez-Law.com

4100 Duval Road, Building 4, Suite 104

Austin, Texas 78759

Telephone: (512) 467-0600

Facsimile: (512) 467-0501

ATTORNEYS FOR PLAINTIFF

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Exhibit B

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Envelope Information

Case Title: RUSSELL PERRY vs. HOME DEPOT USA INC, et al
Plaintiff(s): RUSSELL PERRY
Sealed Case: No
Court Name: Dallas County - District Clerk - Civil
Defendant(s): HOME DEPOT USA INC
Case Category: Civil - Real Property
Case Type: Other Property
Cause Number: DC-21-05134
PAVECON LTD CO

Fee	Est.Amount	Payment Information
ProDoc, Inc. Fees		Payment Account: GREY SW VISA VISA 6295 ▼
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8.25% Sales Tax	\$0.25	
Court Fees		
Issue Citation (\$8.00 x 2)	\$16.00	
The State eFiling System Processing Fees		
Convenience Fee	\$0.56	
Envelope Total:	\$19.81	

Personal Information

Filer: Christine Sanchez**Attorney:** Robert Melendez**Firm or Organization:** Melendez Law Firm, PLLC**Bar Number:****Address:** 4100 Duval Road, Building 4

Austin, TX 78759

Phone: 512-467-0600

Service Recipients

✓ Request

ReferenceNumber: Russell Perry**CommentsForClerk:** Please issue citations per letter and email to attorney when ready. Thank you!!**Courtesy Copies:** morgan@melendez-law.com
christine@melendez-law.com
melendez.attorney@gmail.com**Preliminary Copies:** morgan@melendez-law.com
melendez.attorney@gmail.com
christine@melendez-law.com

Document Information

Lead Document:**Document Description:** Ltr Rst

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4100 Duval Rd., Building 4, Suite 4, Austin, Texas 78759

PHONE: (512) 467-0600 ♦ FAX: (512) 467-0501

www.austininjury.org

Robert M. Melendez

Morgan Curell

Dallas County District Clerk

Re: Cause No. DC-21-05134; Russell Perry vs. Home Depot, U.S.A. Inc. & Pavecon Ltd., Co.; In the 192nd Judicial District Court of Dallas County, Texas

Dear Clerk,

The purpose of this letter is to request and pay for the issuance of (2) citations for the following entities below:

Home Depot U.S.A., Inc., by and through their registered agent: CSC Lawyers Incorporating Service Co., 211 East. 7th St., Ste. 620, Austin, Texas 78701

Pavecon Ltd., Co., by and through their registered agent: Pavecon Management, Inc. 3022 Roy Orr Boulevard, Grand Prairie, Texas 75050.

Thank you for your time and attention to this matter. Please email the citations to attorney when ready at Morgan@Melendez-law.com.

Respectfully,

Christine Sanchez
Paralegal to Morgan Curell

FROM

TO

Name: April McLaurin

Phone:

Fax: 2143796939

5124670501

E-mail: amclaurin@mayerllp.com

Sent: 5/5/21

at: 11:37:34 AM

4 page(s) (including cover)

Subject: Response to Timed Stowers Demand dated April 21, 2021

Comments:

Morgan L. Curell
Melendez Law Firm
4100 Duval Road, Building 4, Suite 104
Austin, TX 78759

RE: Your Client: Russell Perry
D.O.L: 5/27/2019
Our File No.: 10596.4

Good morning:

Please see the attached correspondence from Trey Parham in connection to the referenced matter.

Thank you,

MAYER

APRIL McLAURIN
Legal Secretary to Aaron Spear, Trey Parham, Eugene Olshevskyy & Courtney Kenlsky

MAYER LLP
750 N. Saint Paul Street • Suite 700 • Dallas, TX 75201
214.379.6900 • F 214.379.6939 • mayerllp.com

STATE OF TEXAS }
COUNTY OF DALLAS }

I, FELICIA PITRE, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this Instrument to be a true and correct copy of the original as appears on record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office
in Dallas, Texas, this 22 day of June, A.D., 2021.

FELICIA PITRE, DISTRICT CLERK
DALLAS COUNTY, TEXAS

By Orfa Palacios Deputy
Orfa Palacios

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Morgan Curell on behalf of Robert Melendez
Bar No. 24025532
Morgan@melendez-law.com
Envelope ID: 53745505
Status as of 5/25/2021 3:54 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Christine Sanchez		christine@melendez-law.com	5/24/2021 2:27:26 PM	SENT
Morgan Curell		Morgan@Melendez-law.com	5/24/2021 2:27:26 PM	SENT